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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,009	10/15/2001	Neil John Hursey	01.143.01	9583

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EXAMINER

COLIN, CARL G

ART UNIT	PAPER NUMBER
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2136

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,009

Applicant(s)

HURSEY ET AL

Examiner

Carl Colin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-12,14-21,23-30,32-39,41-48 and 50-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-12,14-21,23-30,32-39,41-48 and 50-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. In response to communications filed on 10/13/2005, applicant cancels claims 4, 13, 22, 31, 40, and 49 and amends claims 8, 10, 19, 28, 37, and 46. The following claims 1-3, 5-12, 14-21, 23-30, 32-39, 41-48, and 50-54 are presented for examination.

1.1 In response to communications filed on 10/13/2005, the objection to the drawings and the specification, and the 101 and 112th rejection have been withdrawn in view of the amendment.

1.2 Applicant's remarks, pages 18-20, filed on 10/13/2005, with respect to the rejection of claims 1-11 and 13-43 have been fully considered but they are moot in view of the new ground(s) of rejection. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Applicant has amended the independent claims to add new limitations. Upon further consideration a new ground of rejection is made.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2.1 **Claim 1-3, 5-12, 14-21, 23-30, 32-39, 41-48, and 50-54** are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication US 2002/0042886 to **Lahti et al** in view of Foreign Patent Publication WO 98/38820 (*Applicant's IDS*) to **Hansson**.

2.2 **As per claims 1-3, 10-12, 19-21, 28-30, 37-39, and 46-48, Lahti et al** discloses a method and apparatus for controlling a mobile data processing device to update malware definition data for a malware scanner of said mobile data processing device, said apparatus comprising:

- (i) link establishing logic operable to establish a wireless telephony link between said mobile data processing device and a public wireless telephony network (pages 1-2, paragraph 20);
 - (ii) update receiving logic operable to receive malware definition updating data at said mobile data processing device via a data channel of said wireless telephony link (pages 1, paragraph 7);
- and

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(iii) malware definition updating logic operable to update malware definition data stored upon said mobile data processing device using said malware definition updating data (page 1, paragraphs 6-12).

Lahti et al further discloses wherein said mobile data processing device is a mobile telephone or personal digital assistant having a connection to said wireless public telephony network (page 1, paragraph 13).

Lahti et al discloses malware definition updating data may be received in two different types as a database update or as a software patch, and discloses the new updating data are incorporated into the definition data stored in the device and further discloses to prevent the update information from attack it is preferable that the message carrying the malware definition updating data is cryptographically signed that meets the recitation of a type of the received data is identified to determine if the received data is the malware definition updating data, a digital signature associated with the updating data is verified to determine if it should be ignored or be utilized by appending the said malware definition updating data to said malware definition data stored in the mobile device (see page 1, paragraphs 7-12, 15, page 2, paragraph 26, and page 3); **Lahti et al** discloses the malware definition updating data is provided in update file generated by one of automatically, semi-automatically, and manually upon analysis of newly discovered malware and where said file includes a detection fingerprint and at least one of a removal action and a disinfection action to be taken in response to a detection of the newly discovered malware (see page 2, paragraphs 22-27); and discloses the mobile device is identified by a database of subscribers to an update service associated with the malware scanner (see page 2, paragraph 23);

only malware definition updating data that is appropriate to the type of the processing device is sent to the processing device (page 2, paragraphs 24-26).

Lahti et al discloses a mobile wireless network comprising base stations and mobile device centre that contains records of subscribers of mobile device and automatically receiving updates to the mobile device through SMS text messages over a signaling channel that meets the recitation of wherein said mobile data processing device registers with a base station of said wireless telephony network when said link is established such that said base station and said wireless telephony network are notified of a telephone number of said mobile data processing device for use in sending said malware definition updating data to said mobile data processing device (page 1, paragraph 19 and page 2, paragraph 23). **Lahti et al** did not disclose the details of how to obtain subscribers' records because these are obvious and well known features to one of ordinary skill in the art. **Hansson** in an analogous art discloses a method and apparatus for downloading updating software on a cellular telephone of a subscriber device wherein the update server calls the cellular telephone for offering the option to download the software (page 6, lines 1-5); and further discloses the updating data is verified using a calculated checksum against the checksum transmitted and if the verification failed, the updating data is ignored, if verification is successful the updating takes place (page 4, lines 13-26). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the method of **Lahti et al** and **Hansson** to use the phone numbers of the mobile device subscribers as part of record information for update and to include the condition steps of whether the signature is verified or not. One skilled in the art would have been lead to make such a modification because registering mobile devices and using their phone numbers to receive updates and text

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messages are well known feature. It would have been obvious to one of ordinary skill in the art to make this modification in order to maintain record of all subscribers and provide them with updates as suggested by **Lahti et al** (see page 2, paragraph 23, and page 1, paragraph 12) and **Hanson** (page 5, lines 1-6 and page 1, 25-30).

As per claims 5-7, 14-16, 23-25, 32-34, 41-43, and 50-52, Lahti et al discloses the limitation of wherein said public wireless telephone network is one of a CDMA network and a GSM network (page 1, paragraph 9) and discloses wherein said data channel is also used for passing text messages wherein said text messages are SMS messages (page 1, paragraph 10 and page 2, paragraphs 24-25).

As per claims 8-9, 17-18, 26-27, 35-36, 44-45, and 53-54, Lahti et al discloses the limitation of wherein said step of receiving is initiated from a source of said malware definition updating data (page 2, paragraph 25), wherein said data channel is open whenever said mobile data processing device is switched on and connected to said public wireless telephony network (page 2, paragraph 25).

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

3.1 The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as the art discloses virus detection, analysis, and update, in real time.

US Patents: 6,338,141 Wells; 6,279,113 Vaidya ; 6,205,551 Grosse ;
5,948,104 Gluck et al.

3.2 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl Colin whose telephone number is 571-272-3862. The examiner can normally be reached on Monday through Thursday, 8:00-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Carl Colin

Patent Examiner

January 19, 2006



AYAZ SHEIKH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100